

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Shaheen Cabbagestalk,

Plaintiff,

V.

Ms. Hardin; Head Quarters Grievance Branch; DHO Ms. Alyson Glidewell; Cpl Hines; Ofc Harruff; Nurse Tarcia James; Sgt S Terry; Lt Thompkins,

Defendants.

No. 5:13-cv-2974-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the Court grant Defendants’ motion for summary judgment and deny Plaintiff’s pending motions. (Dkt. No. 113). As set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a state prisoner proceeding pro se, brings this civil action under 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was automatically referred to a Magistrate Judge for pretrial proceedings. Plaintiff then filed a motion for summary judgment, (Dkt. No. 22), Defendants filed a response, (Dkt. No. 36), and Plaintiff filed a reply, (Dkt. No. 42). Defendants also filed a motion for summary judgment, (Dkt. No. 35), to which Plaintiff responded, (Dkt. No. 62), and Defendants filed a reply, (Dkt. No. 67). The Magistrate Judge then issued the present R&R recommending the Court grant Defendants' motion for summary judgment. (Dkt. No. 113). Plaintiff then filed objections. (Dkt. No. 116).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After review of the record, the R&R, and Plaintiff’s objections, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and wholly adopts the R&R as the order of the Court. The Court agrees that Defendants are entitled to summary judgment as to each claim raised by Plaintiff in his complaint.

Plaintiff’s objections are unavailing. Plaintiff first objects that dismissal of Defendant Harruff for failure to serve this Defendant within 120 days after filing the complaint is improper because Plaintiff moved to amend his complaint to correct the name to Officer Herald. Fed. R. Civ. P. 4(m). However, the record shows that Plaintiff was given ample opportunity to file an amended complaint, (*see* Dkt. No. 47), but he never did so. Further, Plaintiff’s motions to amend, (Dkt. No. 30, 63), never mention an Officer Herald. Therefore, the Court agrees with the Magistrate Judge that Defendant Harruff is properly dismissed. Plaintiff next objects that his Eighth Amendment claim for deliberate indifference should not be dismissed because another prisoner, Michael Simmons, witnessed Defendant Hines allow another prisoner to injure him and Mr. Simmons also witnessed his inadequate medical care. However, a review of the record does

not reveal any affidavit or other evidence submitted by this witness. The Court therefore finds that this objection is insufficient to create a genuine issue of fact. *See* Fed. R. Civ. P. 56(c) (affidavits or declarations must be made on personal knowledge and set out facts admissible in evidence). Finally, Plaintiff's objections refer to the "title of nobility act" and the "original thirteenth amendment." The Court finds these objections are unresponsive to the R&R.

Conclusion

As set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 113). Accordingly, the Court grants Defendants' motion for summary judgment, (Dkt. No. 35), and denies Plaintiff's pending motions, (Dkt. Nos. 22, 104, 110).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

June 27, 2014
Charleston, South Carolina